

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MINUTES OF JURY TRIAL

DATE: 11/7/2012 DAY: 2

CASE NO. 3:04-cv-837-PMF

PRESIDING: HON. PHILIP M. FRAZIER

TROY D. WHITMORE,

Plaintiff,

vs.

DONALD SNYDER, et. al.,

Defendants.

) REPORTER: Stephanie Rennegarbe,
) Northcutt Reporting Service

) COURTROOM DEPUTY: Karen R. Metheney

) CONVENED: 8:30 AM

) ADJOURNED: 4:10 PM

) CRIMINAL: CIVIL: X

Counsel for Plaintiff: Ronald B. Ziegler, David A. Weder, John H. Kohler

Counsel for Defendant: Christopher L. Higgerson, Kelly R. Choate

PROCEEDINGS: Jury Trial

ORDER: Plaintiff is permitted to proffer evidence regarding Count 5 of the amended complaint (Doc. 16) concerning an allegation that Defendant Fritz violated Plaintiff's right to be free of cruel and unusual punishment under the Eighth Amendment. Specifically, Count 5 alleges that on May 16, 2003, Defendant Fritz prevented others from seeing Defendant Casten's use of excessive force by repeatedly kicking a food slot door closed on Plaintiff's arm. The parties and the Court construe Count 5 as a failure to intervene claim. Such a claim cannot succeed unless Plaintiff can establish that Defendant Casten "used excessive force in violation of his Eighth Amendment rights." Harper v. Albert 400 F.3d 1052, 1064 (7th Cir. 2005) (citation omitted). This Court granted Defendant Casten's motion for summary judgment regarding Plaintiff's excessive force claim (Count 5) on March 27, 2009. See Docs. 118, 121. For the reason outlined here, Defendant Fritz now moves for judgment as a matter of law pursuant to Rule 50 of the Federal Rules of Civil Procedure on Count 5. The motion is GRANTED.

PLAINTIFF'S WITNESSES:

(2) Jason Johnson (by video conference) Time: 9:27-9:33 a.m.

(3) Corey Knox (by video conference) Time: 9:38-9:46 a.m.

Plaintiff rests: ✓.

Case No. 04-837-PMF, *Whitmore v. Snyder, et. al.*

Minutes of Jury Trial, Day 2, 11/7/2012

Defendant Mezo's Rule 50 motion regarding Count 1 (Count 2 of the amended complaint) is DENIED.
Defendant Carter's Rule 50 motion regarding Count 2 (Count 10 of the amended complaint) is DENIED.
Defendant Robinson's Rule 50 motion regarding Count 3 (Count 14 of the amended complaint) is DENIED.
Defendants Carter, Fritz, Greenley, Henry, Presswood, Rees, and Whittoft's Rule 50 motion regarding Count 4 (Count 15 of the amended complaint) is DENIED.
Defendants Presswood and Whittoft's Rule 50 motion regarding Count 5 (Count 16 of the amended complaint) is DENIED.

DEFENDANTS' WITNESSES:

(1)	Thomas Mezo	Time: 9:47-9:53 a.m.
(2)	John Carter	Time: 9:54-10:19 a.m.
(3)	Daniel Helmer	Time: 10:20-10:22 a.m.
(4)	Kenneth Miner	Time: 10:22-10:30 a.m.
(5)	Aaron Robinson	Time: 10:30-10:34 a.m.
(6)	Josh Fritz	Time: 10:48-10:53 a.m.
(7)	William Rees	Time: 10:53-11:01 a.m.
(8)	Rick Greenley	Time: 11:02-11:03 a.m.
(9)	Sean Henry	Time: 11:03-11:05 a.m.
(10)	Eric Presswood	Time: 11:05-11:08 a.m.
(11)	Jerry Witthoft	Time: 11:08-11:12 a.m.
(12)	Gail Walls	Time: 1:01 -1:25 p.m.

Defendants' rest: ✓

FINAL ARGUMENT ON BEHALF OF THE PARTIES:

Attorney Ziegler on behalf of plaintiff
Attorney Higginson on behalf of defendants
Attorney Ziegler on behalf of plaintiff

MARSHAL SWORN: ✓

JURY RETIRES: 2:42 p.m.

JURY RETURNS: 3:57 p.m.

VERDICT GIVEN TO COURT: ✓ VERDICT READ: ✓ JURY POLLED: _____

VERDICT: In favor of defendant Thomas Mezo and against plaintiff on Count 1; in favor of defendants John Carter, Dan Helmer, and Kenneth Miner and against plaintiff on Count 2; in favor of defendant Aaron Robinson and against plaintiff on Count 3; in favor of defendants John Carter, Joshua Fritz, Ricky Greenley, Sean Henry, Eric Presswood, William Rees, and Jerry Whitthoft and against plaintiff on Count 4; in favor of defendants Eric Presswood, William Rees, and Jerry Whitthoft and against plaintiff on Count 5.

JURY EXCUSED: ✓

EXHIBITS: One envelope exhibits to be placed in Benton vault.